

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHAWN GOODE,

Petitioner

v.

RUSSELL PERRY, et al.,

Respondents

Case No.: 3:18-cv-00362-RCJ-WGC

ORDER

On March 3, 2020, this court granted in part respondents' motion to dismiss certain grounds in petitioner Shawn Goode's 28 U.S.C. § 2254 habeas corpus petition (ECF No. 25). Goode has filed a motion for clarification of that order as well as a motion for appointment of counsel (ECF Nos. 26, 27).

In its March 3, 2020 order on the motion to dismiss, the court concluded that grounds I, II, and III are unexhausted. Goode did not present these three claims of ineffective assistance of counsel to the highest state court. Thus, with respect to grounds I, II, and III Goode must choose one of the following options (as this court stated in its earlier order):

1. He may submit a sworn declaration voluntarily abandoning grounds I, II, and III of his federal habeas petition and proceed only on the exhausted claims;

- 1 2. He may return to state court to exhaust his unexhausted claims, in which
- 2 case his federal habeas petition will be denied without prejudice; or
- 3 3. He may file a motion asking this court to stay and abey his exhausted federal
- 4 habeas claims while he returns to state court to exhaust his unexhausted
- 5 claims.

6 Respondents did not challenge grounds IV, V, or VII in their motion to dismiss.
7 Depending on which of the three options Goode chooses regarding the unexhausted
8 grounds respondents may file an answer. Respondents' answer would then address
9 the merits of grounds IV, V, and VII. The answer would also address ground VI
10 because this court held that ground VI is exhausted. Goode must first choose one of
11 the three options with respect to unexhausted grounds I, II, and III before any further
12 litigation of this federal petition.

13 Goode also filed a motion for appointment of counsel (ECF No. 27). There is no
14 constitutional right to appointed counsel for a federal habeas corpus proceeding.
15 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428
16 (9th Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v.*
17 *Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor*
18 *v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However,
19 counsel must be appointed if the complexities of the case are such that denial of
20 counsel would amount to a denial of due process, and where the petitioner is a person
21 of such limited education as to be incapable of fairly presenting his claims. See
22 *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948 (8th Cir.1970).

1 Here, Goode moved for counsel due to his confusion about when the court would
2 address the merits of his claims. His petition sets forth his claims reasonably clearly,
3 and the legal issues are not particularly complex. Thus, with this clarification of when
4 the court will address the merits of his claim, the court concludes that counsel is not
5 warranted. Accordingly, Goode's motion is denied.

6 **IT IS THEREFORE ORDERED** that petitioner's motion for appointment of
7 counsel is (ECF No. 27) is **DENIED** as set forth in this order.

8 **IT IS FURTHER ORDERED** that petitioner's motion for clarification (ECF No. 26)
9 is **GRANTED** as set forth in this order.

10 **IT IS FURTHER ORDERED** that petitioner shall have **30 days FROM THE**
11 **DATE OF THIS ORDER** to either: (1) inform this court in a sworn declaration that he
12 wishes to formally and forever abandon the unexhausted grounds (grounds I, II, III) for
13 relief in his federal habeas petition and proceed on the exhausted grounds; OR (2)
14 inform this court in a sworn declaration that he wishes to dismiss this petition without
15 prejudice in order to return to state court to exhaust his unexhausted grounds; OR (3)
16 file a motion for a stay and abeyance, asking this court to hold his exhausted grounds in
17 abeyance while he returns to state court to exhaust his unexhausted grounds. If
18 petitioner chooses to file a motion for a stay and abeyance, or seek other appropriate
19 relief, respondents may respond to such motion as provided in Local Rule 7-2.

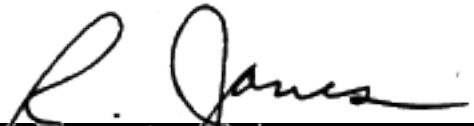
20 **IT IS FURTHER ORDERED** that if petitioner elects to abandon his unexhausted
21 grounds, respondents shall have 30 days from the date petitioner serves his declaration
22 of abandonment in which to file an answer to petitioner's remaining grounds for relief.
23 The answer shall contain all substantive and procedural arguments as to all surviving

1 grounds of the petition and shall comply with Rule 5 of the Rules Governing
2 Proceedings in the United States District Courts under 28 U.S.C. §2254.

3 **IT IS FURTHER ORDERED** that petitioner shall have 30 days following service
4 of respondents' answer in which to file a reply.

5 **IT IS FURTHER ORDERED** that if petitioner fails to respond to this order within
6 the time permitted, this case may be dismissed.

7 DATED: 8 July 2020.

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9 ROBERT C. JONES
10 UNITED STATES DISTRICT JUDGE
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